

**PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**DOCKET NO. 2019-233-A**

IN THE MATTER OF:	)	
	)	
Procedure to Address Treatment of Deferrals	)	<b>COMMENTS OF</b>
(See Page Number 5 of Order No. 2019-341)	)	<b>NUCOR STEEL –</b>
	)	<b>SOUTH CAROLINA</b>
	)	

Pursuant to Public Service Commission of South Carolina Order No. 2019-477, Nucor Steel-South Carolina, a Division of Nucor Corporation, hereby submits the following comments on the procedure and standards that should apply to the creation and treatment of utility deferrals. Our comments focus on the utility practice of requesting approval of an accounting order outside of a rate case to defer capital costs and/or operating expenses as a regulatory asset for potential future recovery.<sup>1</sup>

**I. INTRODUCTION**

As a large industrial customer of Duke Energy Progress (“DEP”), Nucor has an important interest in this proceeding because utility deferrals can have a significant impact on utility rates paid by consumers. Nucor appreciates the opportunity to share its thoughts on this important topic, and we request that the Commission give strong consideration to consumer interests in establishing the procedure and standards that should be applied regarding a deferral request. Following is a summary of Nucor’s comments:

- From the consumer perspective, in some instances deferrals can be a benefit if they truly defer rate increases, but in other instances, deferrals can be detrimental to consumers. Deferrals are a form of single-issue ratemaking and can violate the matching principle when recovery is permitted in a future rate proceeding.<sup>2</sup>

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<sup>1</sup> These comments do not address deferrals and regulatory assets created during a general rate increase proceeding, which in our view, should be assessed and addressed on a case-by-case basis in such proceedings. We also do not address the creation of regulatory liabilities to defer a cost reduction to return to consumers in a future proceeding.

<sup>2</sup> *In the Matter of Application of Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina*, Docket No. E-7, Sub 1146 et al, Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction at 148 (June 22, 2018) (“June 22 Order”). The North Carolina Utilities Commission explained that it “has also been reluctant to allow deferral accounting because it, typically,

Deferrals can cause unnecessary rate increases and/or contribute to the magnitude of future rate increases by allowing utilities to recover specific out-of-test period costs by pulling them into a rate case (these costs otherwise would never be considered in setting rates because the cost fell outside of the test period) and can also result in recovery of carrying costs that otherwise would be avoided.

- We support establishing a reasonable process and standards for issuance of an accounting order and the creation of a deferral. First, regulatory assets should not simply be created as a matter of course upon request of the utility. Instead, the utility should have to demonstrate that the costs being deferred are extraordinary and result from unusual circumstances, that the costs are unusually large and non-recurring, that not deferring the cost would have a significant negative affect on the utility's earnings such that it may impair the utility's financial integrity, and that the deferral will provide significant expected benefits to ratepayers. The amount of the deferral should be limited as appropriate consistent with these considerations.
- The issuance of an accounting order and the establishment of a regulatory asset outside of a general rate proceeding should only create the possibility for a utility to request recovery in the next rate case. Approval of a deferral should not create any precedent or establish any presumption that the utility will be able to recover the cost.
- When the utility seeks actual recovery of the cost (typically in a rate case), the utility should have the burden of proof to demonstrate why approval of recovery of a deferral that will increase rates is just and reasonable. To meet this burden, the utility should have to show that deferral was justified, that the deferral is the result of highly unusual circumstances and the cost is extraordinary and justifies special treatment, that the recovery of the deferral is consistent with public policy, and that the amount of the cost and the adjustments proposed to recover the deferred costs are reasonable, necessary, and prudent.
- When a utility seeks to recover deferred costs (such as in a rate case), all issues related to the deferral (not just the prudence of the deferred cost) should be decided in that rate case without any deference to or consideration of the fact that deferred accounting was permitted.

Nucor believes that these positions are generally consistent with how the Commission has treated deferral requests in the past. However, we believe it would be beneficial to all parties

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equates to single-issue ratemaking for the period of deferral, contrary to the well-established, general ratemaking principle that all items of revenue and costs germane to the ratemaking and cost-recovery process should be examined in their totality in determining the appropriateness of the utility's existing rates and charges." *Id.*

for the Commission to establish a clear policy going forward for addressing both: (i) how a deferral may be created, and (ii) how that deferral will be addressed in a rate case, when a utility seeks to include the deferred costs in rates. On the other hand, we do not recommend setting policy in this docket as to specific treatment and recovery mechanisms for regulatory assets in a rate case – the approach to such assets is fact and case-specific and the Commission should maintain the flexibility to address such issues in the context of a rate proceeding when considering all of the other issues in the case.

## II. COMMENTS

Utilities have the ability to request approval of deferred accounting treatment for certain costs, rather than recognizing the expenditure in the year it is incurred. If the Commission issues an accounting order approving deferral treatment, a regulatory asset is created, and the utility typically will seek to include the costs of the regulatory asset (with a carrying cost) in rates in a subsequent rate case. Use of an accounting order to accomplish deferrals has been fairly common in South Carolina.

Utilities often justify a request for deferred accounting treatment on the grounds that the utility will face earnings degradation absent the deferral, which in turn “could impair [the utility’s] financial stability and ability to attract capital on reasonable terms.”<sup>3</sup> The Commission has also recognized that deferrals can benefit customers by delaying rate cases.<sup>4</sup> Nucor recognizes that deferrals can provide ratepayer benefits in certain situations, so we do not want to see the practice eliminated. However, the deferral process also has the potential to be abused if deferrals are granted on a routine basis, or if the creation of a deferral carries with it an expectation that the deferred cost can be recovered in the next rate case. For these reasons, as discussed further below, we think that reasonable standards and procedures should be established that will be applied in considering a request for deferred accounting treatment.

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<sup>3</sup> *Petition of Duke Energy Carolinas, LLC for an Accounting Order to Defer Certain Capital and Operating Expenses*, Docket No. 2018-207-E, Petition at 8 (June 22, 2018).

<sup>4</sup> See, e.g., *Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order*, Docket No. 2018-318-E, Order No. 2019-341 at 96 (May 21, 2019) (noting that customers benefitted from the deferrals at issue in the case by “receiving services that DEP paid for up-front and, to the extent that a rate case would have increased rates, from lower rates over that period.”).

Once a deferral is created, there should be no presumption of recovery, but instead all issues related to the inclusion of the deferral in rates should be addressed when the utility seeks rate recovery.

**A. Reasonable Procedures and Standards Should be Established for Determining Whether to Approve a Request for Deferred Accounting Treatment**

The Commission's policy toward deferrals should be viewed and understood in the context of South Carolina's overall ratemaking paradigm. South Carolina uses an historical test year approach. The utility has access to all of the relevant information on an on-going basis and controls when it files a rate case and the test year it proposes to use with that information in mind. It is in the utility's interest to select the timing of the rate case and to use a test year favorable to the utility. However, given these factors favoring the utility, the utility should have to accept the negative impacts (to the utility) of the test year it selects, along with the positive impacts. Deferrals may be used as a tool by a utility to preserve its earnings in a given year by deferring certain costs. The utility can then move these costs from outside the test period into the test year for the next rate case, thereby mitigating the negative impacts of the chosen test year to the utility. To ensure a reasonable matching of revenues, expenses, and rate base, the inclusion of extra test period costs in the test year should be minimized. As a matter of regulatory policy, therefore, deferrals should be clearly recognized as the rare exception and not the rule, and should not be established for routine costs and cost fluctuations. This is consistent with the policy applied to deferrals by several states. For example, the North Carolina Utilities Commission has "historically treated deferral accounting as a tool to be allowed only as an exception to the general rule, and its use has been allowed sparingly,"<sup>5</sup> and the Virginia State Corporation Commission has found that "deferral of any costs is unusual and should be allowed for ratemaking purposes only rarely and in extreme situations."<sup>6</sup>

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<sup>5</sup> *In the Matter of Petition of Duke Energy Carolinas, LLC for an Accounting Order to Defer Certain Environmental Compliance Costs and the Incremental Costs Incurred From the Purchase of a Portion of Saluda River's Ownership in the Catawba Nuclear Station*, Docket No. E-7, Sub 874, Order Approving Deferral Accounting with Conditions at 24 (March 31, 2009).

<sup>6</sup> *Application of Washington Gas Light Company, Virginia Division for an Annual Informational Filing*, Case No. PUE-1997-00328, Opinion at 7-8 (June 25, 1998).

As a threshold matter, when reviewing an application by a utility to create a deferral, reasonable standards should be applied to ensure that such deferral treatment is only afforded for costs that are deserving of special treatment. These standards should include at least the following:

- the costs being deferred must be extraordinary and must result from unusual circumstances;
- the costs must be unusually large and non-recurring;
- the utility must demonstrate that not deferring the cost would have a significant negative affect on the utility's earnings such that it may impair the utility's financial integrity; and
- the utility must demonstrate significant expected benefits to ratepayers from the deferral (such as truly deferring a rate case).

These types of standards have been considered in South Carolina when reviewing requests for deferral treatment, and other states have applied them as well.<sup>7</sup> We recommend that the Commission adopt these standards, and any others the Commission feels are appropriate, and apply them on a consistent basis for future deferral requests. Meeting these standards would serve as an initial hurdle for the utility seeking to establish a regulatory asset. The Commission should also require the utility to provide detailed information supporting any request for an accounting order such that the Commission and other interested parties can fully review the justification for an accounting order. However, to be clear, this review should be a preliminary assessment only and should be subject to reconsideration when recovery is sought – as a result, we are not suggesting that an evidentiary hearing is necessary or desirable to apply these standards and determine whether to permit deferral. In fact, we think such a hearing is generally unnecessary and would defeat the purpose of the accounting order process. The

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<sup>7</sup> See, e.g., June 22 Order, *supra* note 2 at 148 (“In order for the Commission to grant a request for deferral accounting treatment, the utility first must show that the cost items at issue are adequately extraordinary, in both type of expenditure and in magnitude, to be considered for deferral. Second, the utility has to show that the effect of not deferring such cost items would significantly affect the utility's earned returns on common equity.”); *Kansas City Power & Light v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757 at 769 (Mo. W. Dist. Ct. App. 2016) (“[t]he standards for granting the authority to a utility to defer costs incurred outside of a test year as a regulatory asset are: 1) that the costs pertain to an event that is extraordinary, unusual and unique, and not recurring; and 2) that the costs associated with the event are material.”).

hearing is best reserved for when the rate increase related to the deferral is being considered by the Commission.

**B. When a Deferral Request has Been Approved and a Regulatory Asset Has Been Created, All Issues Related to the Inclusion of the Deferred Cost in Rates (Including Those Addressed on a Preliminary Basis in the Accounting Order) Should be Addressed in the Next Rate Case**

Once a deferral has been created through approval of a deferral application by the Commission, it should be treated as a placeholder, serving to preserve the issue to allow the utility to request recovery in a future rate proceeding. This is the posture the Commission has typically taken in approving deferral requests. For example, in a recent order approving a request by Duke Energy Carolinas and DEP to defer certain coal ash remediation costs, the Commission noted that the “requested deferment of costs would not involve a change to any of the Companies’ retail rates or prices at this time or require any change in any Commission rule, regulation, or policy,” and further ordered that its ruling “in no way limits the ability to challenge the reasonableness of these expenditures in a subsequent general rate case or other proceeding.”<sup>8</sup> Similarly, in an order approving a request by Progress Energy Carolinas, Inc. to defer and amortize storm damage expenses related to a 2004 ice storm, the Commission ordered that “[t]he accounting treatment approved herein shall not be considered precedent, and Commission approval herein granted shall not prejudice the right of any party to challenge or contest either the amounts involved herein or this accounting treatment in any rate-making or other earnings-related proceeding.”<sup>9</sup>

Beyond preserving the issue of the rate treatment for the regulatory asset for a future case, in approving the creation of a deferral, the Commission should affirm that the establishment of a regulatory asset does not create a presumption that the utility will be able to recover the regulatory asset at some point in the future. In other words, the approval of a deferral and the creation of a regulatory asset should be preliminary only, and should not be determinative in any way of future recovery.

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<sup>8</sup> *Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for an Accounting Order to Defer Certain Coal Ash Remediation Costs*, Docket No. 2016-196-E, Order No. 2016-490 at 2-3 (July 13, 2016).

<sup>9</sup> *Petition of Progress Energy Carolinas, Inc. to Defer and Amortize Storm Damage Expenses*, Docket No. 2004-55-E, Order No. 2004-367(A) at 4 (October 8, 2004).

When a utility requests approval in a rate case to recover a deferral when such requested recovery would increase rates, the utility should have the burden of proof to demonstrate that recovering the deferred cost in rates is just and reasonable. The utility should have to show that the deferral is appropriate for recovery, is the result of unusual circumstances, is consistent with public policy and in the public interest, and that the adjustments proposed to recover the costs are reasonable and necessary. Further, where a utility seeks to include costs associated with a deferral in rates, *all* issues related to the deferral – not just the prudence of the costs – should be fully addressed and resolved. These issues include, among others:

- whether the cost should have been deferred;
- the appropriateness of recovery of the cost, including the prudence of the cost;
- appropriateness of including the deferred cost in the requested test year revenue requirements;
- whether a return should be allowed on the unamortized balance of the regulatory asset;
- the appropriate return, if a return is allowed; and
- the amortization period to be used.

All of these issues should be considered in the light of the circumstances and on a case-by-case basis in the rate case. This approach is more reasonable and efficient than addressing all of these issues in a contested proceeding at the time the deferral is approved, since parties should be able to consider the reasonableness of the cost and the appropriateness of recovery when all of the utility's costs, revenues, and billing determinants are open for examination in a rate case. Finally, considering all issues related to the deferral in a rate case advances administrative efficiency since many parties may not have adequate resources to devote to fully examining all the issues related to the deferred costs every time a deferral is requested, and is the best way to make use of the Commission's own limited resources.

### **III. CONCLUSION**

Nucor appreciates the opportunity to provide comments on this topic. As discussed above, we recommend that the Commission establish and apply a reasonable procedure and

standards in considering a request by a utility for an accounting order to create a deferral. If a utility clears this initial hurdle by meeting the standards and the Commission allows the deferral, this should not create any expectation of future recovery. Instead, all issues related to the deferred cost should be considered in the next rate case on a case-by-case basis.

Respectfully submitted,

MOORE & VAN ALLEN, PLLC

A handwritten signature in black ink, appearing to read "Rob Smith", written in a cursive style.

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This is to certify that the foregoing document was served upon the following parties at the addresses set forth by first-class mail or electronic mail on this the 6<sup>th</sup> day of September, 2019:

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